

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

NEWSMAX BROADCASTING, LLC,

Plaintiff,

- against -

GLOBANT, LLC, as successor-in-interest to RATIO  
CYPRESS LLC and CYPRESSX LLC d/b/a RatioTV,

Defendants.

Civil Action No. \_\_\_\_\_

**COMPLAINT**

Plaintiff Newsmax Broadcasting, LLC (“Newsmax”) by and through its attorneys, Satterlee Stephens LLP, as and for its Complaint against Defendants Globant, LLC (“Globant”) as successor-in-interest to Ratio Cypress LLC (“Ratio Cypress”) and CypressX LLC dba RatioTV (“RatioTV” collectively with Ratio Cypress, “Ratio” and all together herein the “Defendants”) alleges as follows:

**NATURE OF THE ACTION**

1. This is an action for breach of contract on the part of the Defendants due to their material breach of their written agreement with Newsmax. Pursuant the parties’ agreement, the Defendants were to develop specific front-end applications for various platforms that would integrate with Newsmax’s content and products. The Defendants have failed to develop applications that are capable of working with Newsmax’s content, and as such have materially breached the agreement.

**PARTIES**

2. Plaintiff Newsmax is a corporation organized and existing pursuant to the laws of the State of Florida and maintains its principal place of business at 750 Park of Commerce Drive, Suite 100, Boca Raton, Florida 33487.

3. Upon information and belief, Defendant Ratio Cypress LLC is a corporation organized and existing pursuant to the laws of the State of Washington and maintains its principal place of business at 413 Pine Street, Suite 200, Seattle, Washington 98101.

4. Upon information and belief, Defendant CypressX LLC d/b/a RatioTV is a corporation organized and existing pursuant to the laws of the state of Nevada and maintains its principal place of business at 413 Pine Street, Suite 200, Seattle, Washington 98101.

5. Upon information and belief, Defendant Globant, LLC, is a corporation organized and existing pursuant to the laws of the State of Delaware and maintains its principal place of business at 875 Howard Street, Suite 320, San Francisco, California 94103

6. On or about February 28, 2017, Ratio was acquired by Globant, LLC. Globant, LLC is the U.S. subsidiary of Globant S.A., a publicly traded company listed on the NYSE, which develops and provides software solutions in North America, Latin America, Europe, and Asia. As such, Globant, LLC is the successor-in-interest to Ratio.

### **JURISDICTION AND VENUE**

7. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship between the parties and the amount in controversy, exclusive of costs, exceeds \$75,000.

8. Venue is proper in this district pursuant to the parties' express consent to submit all disputes arising out of the agreement to this judicial district. Additionally, the agreement is expressly governed by New York law.

### **FACTS**

9. Newsmax Broadcasting, LLC is a broadcasting company which provides news and media publishing services.

10. Upon information and belief, the Defendants operate as a digital service company specializing in video streaming solutions and app building and development.

11. On or about November 9, 2016, Newsmax and the Defendants entered into a Master Services and License Agreement (the “Master Agreement”), pursuant to which Defendants were engaged to develop applications for various platforms that would integrate Newsmax’s content. A copy of the Master Agreement is annexed hereto as Exhibit A.

12. The Master Agreement set forth the requirements and specifications of the agreement in a Statement of Work (“SOW”) which was signed and agreed to by the parties. A copy of the SOW is annexed hereto as Exhibit B.

13. The Master Agreement provided, in part, that Defendants were to provide the deliverables to Newsmax in accordance with the requirements and specifications set forth in one or more Statement(s) of Work. *See* Master Agreement, Exhibit A annexed hereto at ¶ 2.1.

14. The SOW provided that Defendants would create and launch RatioTV-based video applications on behalf of Newsmax for various platforms including but not limited to iOS, Android, Windows, Apple TV, and SmartTV. *See* SOW, Exhibit B annexed hereto at p. 1.

15. The SOW further provided that:

Each application will be designed to consume data from the RatioTV Service Layer, **which will retrieve content from Newsmax’s Kaltura instance/account.**

*See* SOW, Exhibit B annexed hereto at p. 1 (emphasis added). Kaltura is an online video platform that is utilized by Newsmax to distribute media content.

16. The SOW also provided that:

**Ratio will implement or integrate the following third-party systems into the Newsmax RatioTV implementation:**

- **Kaltura: OTT Product**

See SOW, Exhibit B annexed hereto at p. 4 (emphasis added). OTT means “over-the-top,” the term used for the delivery of film and TV content via the internet, without requiring users to subscribe to a traditional cable pay-TV service.

17. Additionally, the SOW provided that:

Ratio will set up and configure the RatioTV solution architecture. This work will include the following:

1. Implement RatioTV Service Layer
  - a. **Integration of [Newsmax’s] Kaltura account and content into the RatioTV Service Layer**

See SOW, Exhibit B annexed hereto at p. 5 (emphasis added).

18. In or about February 2017, Defendants informed Newsmax that they would be unable to develop an application to utilize the Kaltura OTT features clearly described and agreed to by the parties in the SOW and Master Agreement.

19. Instead of performing in accordance with the SOW and Master Agreement, Defendants attempted to circumvent the necessary and material OTT Kaltura features by offering a different service that was not compatible with Newsmax’s content or platform, and was not agreed to anywhere within the SOW or Master Agreement.

20. On or about May 1, 2017, Defendants proposed an updated SOW which again included the Kaltura OTT specifications originally required within the deliverables Defendants were to provide, but at a much higher price than originally agreed to by the parties. As such, Newsmax did not agree to or sign the proposed SOW, and Defendants continued to fail to meet the Kaltura OTT specifications set forth in the Master Agreement and SOW, thus materially breaching the written agreement with Newsmax.

21. The Master Agreement's "Termination for Cause" section provides in pertinent part:

This Agreement may be terminated by either party in the event of (i) any material default in, or material breach of, any of the terms and conditions of this Agreement by the other party, which default continues in effect after the defaulting party has been provided with written notice of default and thirty (30) days to cure such default.

*See* Master Agreement, Exhibit A annexed hereto, at ¶ 9.2.

22. On or about June 22, 2017, Newsmax sent a demand letter to Ratio's CEO, Nate Thompson, informing him that Ratio had failed to deliver the applications as outlined in the Master Agreement and SOW. A copy of the June 22, 2017 letter is annexed hereto as Exhibit C.

23. On or about July 24, 2017, after receiving no response from Ratio, Newsmax's counsel sent a letter to Ratio's CEO. The letter informed Ratio that since over thirty days had passed since receiving Newsmax's initial letter and since Ratio failed to cure its material breach, pursuant to Section 9.2, the Agreement was terminated for cause. Newsmax further demanded the return of the \$175,000 Setup Fees paid upon execution of the Agreement and the SOW. A copy of the July 24, 2017 letter is annexed hereto as Exhibit D.

24. On or about August 16, 2017, Newsmax's counsel sent a follow up letter to Ratio stating that Newsmax had received no response to their letter. Counsel reiterated Newsmax's demand for the immediate repayment of the Setup Fees. A copy of the August 16, 2017 letter is annexed hereto as Exhibit E.

25. On or about September 8, 2017, Newsmax's counsel sent a similar correspondence to Globant, and received no response. A copy of the September 8, 2017 letter is annexed hereto as Exhibit F.

26. Despite the above referenced communications, Newsmax has received no response from the Defendants, and the Defendants have not repaid the monies owed to Newsmax.

27. To date, Newsmax has received no applications from Defendants that meet the Kaltura OTT specifications provided for in the SOW.

28. Defendants materially breached the agreement by failing to produce applications that were capable of working with Newsmax's content via integration with the specified Kaltura OTT product. Specifically, as clearly required in the Master Agreement and SOW, the Defendants have failed to develop any application that meets the Kaltura OTT specifications and as such have materially breached the agreement.

### **CAUSES OF ACTION**

#### **COUNT I (Breach of Contract)**

29. Newsmax repeats and realleges each and every allegation set forth within Paragraphs 1 through 28 of this Complaint as if set forth in full herein.

30. Newsmax has performed its obligations under the Master Agreement and SOW.

31. Defendants have breached the Master Agreement and SOW by, among other things, failing to develop Kaltura OTT compatible applications that were capable of working with Newsmax's content.

33. Newsmax has been damaged as a result of Defendants' breach of the Master Agreement in an amount to be determined at trial but no less than \$175,000.

#### **COUNT II (Unjust Enrichment)**

34. Newsmax repeats and realleges each and every allegation set forth within Paragraphs 1 through 33 of this Complaint as if set forth in full herein.

35. Newsmax paid the Defendants for specific services which the Defendants did not perform.

36. As a result of the forgoing, the Defendants have been unjustly enriched at the expense of Newsmax in an amount to be determined at trial but not less than \$175,000.

**COUNT III**  
**(Breach of Implied Duty of Good Faith and Fair Dealing)**

37. Newsmax repeats and realleges each and every allegation set forth within Paragraphs 1 through 36 of this Complaint as if set forth in full herein.

38. By entering into the Master Agreement with Newsmax, Ratio and Globant as successor-in-interest to Ratio promised to act in good faith and fair dealing with regard to Newsmax.

39. The Defendants have breached their duty of good faith and fair dealing to Newsmax's detriment. Newsmax has suffered damages as a direct and proximate result of the Defendants' breach of their duties.

WHEREFORE, Plaintiff Newsmax Broadcasting, LLC, demands judgement against Defendants Globant, LLC, Ratio Cypress LLC and CypressX LLC d/b/a RatioTV:

- (i) On Plaintiff's First Count against Defendants for Breach of Contract for an amount to be determined at trial but no less than \$175,000;
- (ii) Awarding Plaintiff recovery of its costs associated with this action, including but not limited to reasonable attorneys' fees; and
- (iii) Awarding Plaintiff such further relief as this Court deems just and proper.

Dated: New York, New York  
October 4, 2017

SATTERLEE STEPHENS LLP

By: \_\_\_\_\_

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